

63G-7-202. Act provisions not construed as admission or denial of liability -- Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on personal liability -- Public duty does not create specific duty.

(1) (a) Nothing contained in this chapter, unless specifically provided, may be construed as an admission or denial of liability or responsibility by or for a governmental entity or its employees.

(b) If immunity from suit is waived by this chapter, consent to be sued is granted, and liability of the entity shall be determined as if the entity were a private person.

(c) No cause of action or basis of liability is created by any waiver of immunity in this chapter, nor may any provision of this chapter be construed as imposing strict liability or absolute liability.

(2) Nothing in this chapter may be construed as adversely affecting any immunity from suit that a governmental entity or employee may otherwise assert under state or federal law.

(3) (a) Except as provided in Subsection (3)(c), an action under this chapter against a governmental entity for an injury caused by an act or omission that occurs during the performance of an employee's duties, within the scope of employment, or under color of authority is a plaintiff's exclusive remedy.

(b) Judgment under this chapter against a governmental entity is a complete bar to any action by the claimant, based upon the same subject matter, against the employee whose act or omission gave rise to the claim.

(c) A plaintiff may not bring or pursue any civil action or proceeding based upon the same subject matter against the employee or the estate of the employee whose act or omission gave rise to the claim, unless:

(i) the employee acted or failed to act through fraud or willful misconduct;

(ii) the injury or damage resulted from the employee driving a vehicle, or being in actual physical control of a vehicle:

(A) with a blood alcohol content equal to or greater by weight than the established legal limit;

(B) while under the influence of alcohol or any drug to a degree that rendered the person incapable of safely driving the vehicle; or

(C) while under the combined influence of alcohol and any drug to a degree that rendered the person incapable of safely driving the vehicle;

(iii) injury or damage resulted from the employee being physically or mentally impaired so as to be unable to reasonably perform the employee's job function because of:

(A) the use of alcohol;

(B) the nonprescribed use of a controlled substance as defined in Section 58-37-4; or

(C) the combined influence of alcohol and a nonprescribed controlled substance as defined by Section 58-37-4;

(iv) in a judicial or administrative proceeding, the employee intentionally or knowingly gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony material to the issue or matter of inquiry under this section; or

(v) the employee intentionally or knowingly:

(A) fabricated evidence; or

(B) except as provided in Subsection (3)(d), with a conscious disregard for the rights of others, failed to disclose evidence that:

(I) was known to the employee; and

(II) (Aa) was known by the employee to be relevant to a material issue or matter of inquiry in a pending judicial or administrative proceeding, if the employee knew of the pending judicial or administrative proceeding; or

(Bb) was known by the employee to be relevant to a material issue or matter of inquiry in a judicial or administrative proceeding, if disclosure of the evidence was requested of the employee by a party to the proceeding or counsel for a party to the proceeding.

(d) The exception, described in Subsection (3)(c)(v)(B), allowing a plaintiff to bring or pursue a civil action or proceeding against an employee, does not apply if the employee failed to disclose evidence described in Subsection (3)(c)(v)(B), because the employee is prohibited by law from disclosing the evidence.

(4) Except as permitted in Subsection (3)(c), no employee may be joined or held personally liable for acts or omissions occurring:

(a) during the performance of the employee's duties;

(b) within the scope of employment; or

(c) under color of authority.

(5) A general duty that a governmental entity owes to the public does not create a specific duty to an individual member of the public, unless there is a special relationship between the governmental entity and the individual member of the public.

Amended by Chapter 415, 2014 General Session